



**Testimony of Joseph McSpedon
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Mr. Chairman, thank you for the opportunity to testify today on the critical and timely issue of democratic institutions and human rights in Venezuela.

I would like to focus my remarks today on our analysis of democratic governance in Venezuela, paying special respect to questions of rule of law and human rights. I will also draw on our experience working in the region with a number of human rights defenders as well share with you some of our recommendations for increased U.S. focus. As you are aware, a core part of Freedom House's mission is to monitor and analyze information about the state of freedom around the world. To this end, we publish on a regular basis a series of reports and surveys on global freedom, including reports that focus on specific aspects of democracy including press freedom, as well as on democratic governance, rule of law and corruption.

Through our annual report, *Freedom in the World*, Freedom House has analyzed the state of political and civil liberties in Venezuela for the past thirty years. In addition, a newer publication, *Countries at a Crossroads*, which focuses more specifically on democratic governance, included Venezuela in its first publication in 2004. Freedom House gives each country a designation of one of the following: Free, signifying a respect for democratic norms and an adherence to international human rights standards; Partly Free, signifying an adherence to some democratic standards; and Not Free, signifying the systematic suppression of democratic institutions and a massive violation of human rights.

During the 1970s Venezuela was consistently given a rating of Free, and was regarded by Freedom House as one of the region's most stable democracies. During the late 1980s and throughout the 1990s, our analysts began to identify gaps in the country's democratic performance, a trend that accelerated after the election of President Hugo Chavez.

Venezuela is currently ranked as a Partly Free country, and has been for the entire period that President Chavez has been in power. Venezuela has generally held free and fair elections, although obviously there was controversy surrounding the recall referendum. It is unclear what role fraud played and how great its impact was, and without further proof there will be no definitive answer. That being said, there is much more to democratic governance than just elections, and the rankings for Venezuela have gone down in a few of the areas critical for this, including in the rule of law and functioning of government sections.

Under the category of rule of law, our analysts specifically look at the degree of judicial independence, the predominance of the rule of law in criminal and civil matters, civilian control of the police and security forces, protection from torture and unjust imprisonment, and equal treatment of all people under the law.

In the current highly politicized climate in Venezuela, the rule of law score has consistently gone down. The Chavez government has made one of its central focus points the control of the judiciary, and they have accomplished it through a variety of means. A high percentage of judges are provisional, which has a serious detrimental impact on citizens' right to proper justice and on the judges' right to stability in their positions as a guarantee of judicial independence and autonomy. There have been a number of instances where this provisional status has led to judges being removed from office for making decisions with which the executive branch did not agree. In addition, there have been a number of recent cases where judges have been named by the government who do not have the required (by law) academic credentials to serve in those positions, and whose sole qualifications are their connections to members of the ruling party.

The Organic Law of the Supreme Court allowed Justices to be added and removed through a simple majority vote in the Congress. In addition, the recent reforms have increased the number of Supreme Court Justices and made it easier for the Chavez government to pack the court with supporters. These overall weaknesses in the judicial sector have contributed to increased impunity within the country.

In terms of the rule of law prevailing in criminal and civil matters, this is also an area where there are deficiencies. Extrajudicial killings, while not on the level of some of the other countries in the region, continue to be a problem. In the most recent annual report of the human rights group Provea, the number of deaths that came at the hands of state security groups, which are reported officially as occurring while suspects were "resisting arrest", has increased by 300% over the past ten years. When combined with the ineffectiveness of the judiciary, it is not surprising that

recent information shows that 90% of all investigations into human rights violations did not make it past the preliminary stages of the process.

Widespread arbitrary detention and torture of suspects, as well as extrajudicial killings by the often-corrupt military security forces and the police, have increased as crime continues to soar. Since the 1992 coup attempts, weakened civilian governments have had less authority over the military and the police, and overall rights abuses are committed with impunity. In the state of Anzoategui, human rights groups have documented over 500 cases of extrajudicial killings over the past four years, and have encountered countless obstacles in bringing the perpetrators to justice.

Torture also increasingly is a problem in Venezuela. Recent studies by Provea state that the number of cases has risen by over 90% in the past five years.

Venezuela has scored consistently low in the area pertaining to the equal treatment under law for all segments of the population. This has certainly been the case for Venezuelans who signed in favor of the recall referendum, and all information regarding these signatures has been made public. Many of the signatories have faced increased discrimination, including being fired from government positions, excluded from government sponsored social programs, and prevented from receiving passports. In addition, the indigenous population, although a small portion of the total population remains for all intents and purposes excluded from most of the benefits of representative democracy.

Under the functioning of government category, we look at the pervasiveness of official corruption, governmental openness and transparency, and the degree to which government policies are determined by freely elected officials.

Corruption, and its corrosive effect on democratic governance, has continued to be an issue in Venezuela under the Chavez Regime. The Executive controls the Citizen Power branch of government created to fight corruption by the 1999 constitution. This branch is made up of the offices of the ombudsman (responsible for compelling the government to adhere to the constitution and laws), the comptroller-general (who controls the revenues and expenses incurred by the government), and the public prosecutor (who provides opinions to the courts on the prosecution of criminal cases and brings to the attention of the proper authorities cases of public employee misconduct and violations of the constitutional rights of prisoners or accused persons).

On April 7, 2003, the Law against Corruption was put into effect. It established a citizen's right to know, and set out the state's obligations to provide, a thrice-yearly rendition of public goods and expenses, except those security and national defense expenditures as exempted by law. The effectiveness of this law is highly suspect considering that Venezuela's ranking by the Transparency International's 2005 Corruption Perceptions Index, was 130 out of 158 countries surveyed, down from 114 the year before.

The Chavez government has done little to free the country from excessive bureaucratic regulations, registration requirements, and other forms of control that increase opportunities for corruption. It has relied instead on attacking persons and social sectors it considers to be corrupt and selectively enforcing good-government laws and regulations against its opponents. At the same time, Chavez replaced the old meritocracy at the state oil company, PDVSA, with his own directorate. New regulations and controls over the economy have ensured that public officials have retained ample opportunities for personal enrichment enjoyed under previous governments.

Consistent threats and a climate of intimidation characterize the government's interaction with civil society groups. The Chavez government has also made an effort to undermine the legitimacy of reputable human rights and other civil society organizations by questioning their ties to international organizations and foreign governments. This has resulted in particularly personal attacks against leading human rights defenders, including a series of statements by high level officials with both veiled and not so veiled threats against the Venezuelan groups that participated in the most recent session of the Inter American Human Rights Commission. These statements are designed to cow Venezuelan human rights defenders and prevent them from fulfilling their work, and also to create a climate where supporters of the government and the society at large rejects these groups, which increases their vulnerability. Restrictions on international funding are a means for limiting effectiveness of Venezuelan civil society, leading to both greater impunity and reliance on state organs.

It is important to note, that in terms of the Inter American system, Venezuela places obstacles before all the "provisional and precautionary measures" handed down in favor of human rights defenders, journalists and NGOs, by the Inter American Court and Inter American Commission on Human Rights (OAS). This increases the danger faced by human rights defenders when carrying out their work, and demonstrates a complete lack of will in fulfilling its international obligations on the part of the Venezuelan Government.

Freedom of peaceful assembly and association are guaranteed in the constitution, and the government generally respected these rights in practice. Public meetings and marches, the latter of which require government permits, are generally permitted without impediment, although government supporters often sought to disrupt these, frequently using violence.

It is important to also note the increasing presence of the military in all aspects of Venezuelan life. Since Chavez's election, Venezuela's military, which is largely unaccountable to civilian rule, has become an active participant in the country's social development and delivery of public services. The 1999 constitution assigns the armed forces a significant role in the state but does not provide for civilian control over the military's budget or procurement practices, or for related institutional checks. A separate system of armed forces courts retains jurisdiction over members of the military accused of rights violations and common criminal crimes, and decisions cannot be appealed in civilian court. The military's massive participation in non-traditional public administration missions has helped to reduce official accountability for acts of corruption.

To this situation has been added the recent development of the creation of private militias, responsible only to the president of the republic. These militias are made up of ordinary citizens, ostensibly to protect the country in the case of invasion, but are more likely a danger to be used against fellow Venezuelans in the current politicized environment. In the statewide elections held last year, candidates from Chavez's party took twenty of the twenty-two gubernatorial slots in the country. Ten of these governors are former military colleagues of President Chavez. The military is also used to run many of the country's prisons, in violation of the Venezuelan Constitution.

Finally, freedom of the press is one of the most important freedoms in a functioning democracy. In the most recent version of Freedom House's *Freedom Of the Press* annual survey, Venezuela was ranked not free, for the consistent efforts of the Chavez government to control the mostly opposition owned media. Although the constitution provides for freedom of the press, the exercise of that right is difficult in practice. A climate of intimidation and hostility, including physical attacks, exists with a strong anti-media rhetoric by the government and a significant anti-Chavez slant on the part of media owners. In July 2004, a new law was ratified that regulates the work of journalists, provides for compulsory registration with the national journalism association, and punishes reporters' "illegal" conduct with prison sentences of three to six months. A Supreme Court ruling upheld censorship laws that effectively declared that laws protecting public authorities and institutions from insulting criticism were constitutional. The Law on the Social Responsibility of Radio and TV,

giving the government control over the content of radio and television programs, went into effect in December. According to the Inter-American Press Association, the government “uses official advertising as an instrument of coercion and has become the country’s ‘main communicator.’” The Special Rapporteur for Freedom of Expression of the Inter American Commission has also condemned this law and the restrictions it places on freedom of the press. All of this has resulted in self censorship. Recent reports on all of the major stations show that they are extremely careful about airing anything that could be considered illegal under the new laws.

In closing, I would like to include some suggestions for future U.S. focus in Venezuela.

- (1) The U.S. should remain focused on human rights – especially as rising crime rates are creating pressures within the region to bypass basic human rights procedures. The U.S. should increase support for the work of human rights defenders that monitor and report on abuses, as well as the functioning of the justice system, and can provide legal advice and services for citizens in accessing justice and raise public awareness of their rights. Human rights defenders must be able to continue to do their job professionally and credibly, which is the only way they can face the public attacks on their reputation.
- (2) The U.S. should continue to advocate for effective ways to utilize the Inter American Democratic Charter and the steps that it spells out in the event of the steady erosion of democratic institutions, working with other concerned nations specifically on the case of Venezuela.
- (3) The U.S. should look to broaden the support among other countries in the region by deepening their engagement in the promotion of democracy. Venezuela has taken an international approach to its perceived conflict with the U.S., enlisting the support of many other Latin American countries. The U.S. needs to effectively engage these countries, not solely on issues of trade and security, but also on the fundamental support necessary to maintaining democratic rule in the region. The U.S. should take advantage of the existing mechanisms of the Community of Democracies, of which many of Latin American countries are members, to build support for increased pressure on Venezuela to maintain its fragile democracy.